87-1950

No. .....

Supreme Court, U.S.
FILED
MAY 31 1988
JOSEPH F. SPANIOL, JR.
CLERK

In The
Supreme Court of the United States
October Term, 1987

—o—

"In re John L. Cheek"

—o—

On Extraordinary Writ to the
United States Tax Court

—o—

PETITION FOR EXTRAORDINARY WRIT IN THE NATURE OF ~~MANDAMUS~~ PROHIBITION

—o—

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QUESTIONS PRESENTED

1. Was Judge Parker an impartial decision maker when she issued a judgment against a white male Christian who was not audited, refused to stipulate until compelled by Judge Parker, and challenged the jurisdiction of U.S. tax court?

2. Can an Article I Judge issue a judgment against the will and over the objections of a white male Christian inhabitant of the State of Illinois who has executed and recorded legal documents denying voluntary use of federal debt, denying state created franchises, and revoking and rescinding his former social security number?

PARTIES

The parties in U.S. tax court were Judge Edna G. Parker; the Commissioner of Internal Revenue, a public minister; and John L. Cheek against his will and over his objections.

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OPINIONS BELOW

The U.S. tax court decision of Judge Parker is reproduced as Appendix "A1".

The Court of Appeals orders denying relief are reproduced as Appendix "B1" and Appendix "B2".

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GROUNDS OF JURISDICTION OF SUPREME COURT

This writ arises from the judgment of the Court of Appeals entered on February 16, 1988.

The jurisdiction of this Court is invoked pursuant to Art. III, Secs. 1 & 2 of the Constitution and 28 U.S.C. Sec. 1651(a) if required.

———o———

APPLICABLE CONSTITUTIONAL PROVISIONS

Art. I, Sec. 1 states:

> All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Art. I, Sec. 8, cl. 17 states in relevant part:

> To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the acceptance of Congress, become the seat of Government of the United States . . .

Amendment 10 states:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment 14, Sec. 1 states in relevant part:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

Art. I, Sec. 1 of the Constitution of Illinois states:

> All men are by nature free and independent and have certain inherent and inalienable rights among which are life, liberty and the pursuit of happiness. To secure these rights and the protection of property, governments are instituted among men, deriving their just powers from the consent of the governed.

STATEMENT OF THE CASE

This case arises from the judgment of the Court of Appeals which refused to issue a writ of error to a U.S. tax court decision. Each and every question presented for consideration by the Court of Appeals involved jurisdiction.

The petitioner had been issued a notice of deficiency without being audited, had refused to stipulate until compelled by Judge Parker, and had challenged the jurisdiction of U.S. tax court over him. The fabricated deficiency was such a large amount that petition was denied the option of paying it and going to district court.

The basis of jurisdiction in U.S. tax court is unknown. When petitioner challenged the jurisdiction, the IRS refused to respond and Judge Parker stated this court has jurisdiction but refused to state authority for the alleged jurisdiction.

———o———

SUBSTANTIALITY OF FEDERAL QUESTION

This Extraordinary Writ calls for an exercise of this Court's power of ~~supervision~~ PROHIBITION because Judge Parker departed from the accepted and usual course of judicial proceedings. When jurisdiction is challenged, it must be proven. Can an Article I Judge issue a judgment against the will and over the objections of a white male Christian inhabitant of the State of Illinois who has executed and recorded legal documents denying voluntary use of federal debt, denying state-created franchises, and revoking and rescinding his former social security number?

———o———

ARGUMENT

Judge Parker was not an impartial decision maker, and due process requires an impartial decision maker. *Goldberg v. Kelly*, 90 S.Ct. 1011, 1022. When jurisdiction is challenged, it must be proven. "The presumption is that a cause is without jurisdiction unless the contrary affirmatively appears." *Grace v. American Central Ins. Co.*, 109 U.S. 278, 283. Petitioner, a layman, filed a writ of error with the Court of Appeals because all issues in-

volved jurisdiction. When the Court of Appeals informed petitioner that he had not indicated any of the issues he raised could not be adjudicated on appeal, petitioner did not have time to file an appeal since he was extremely busy defending himself against criminal charges for alleged tax violations.

An Article I Judge can't issue a judgment against the will and over the objection of a white male Christian inhabitant of the State of Illinois who has executed and recorded legal documents denying voluntary use of federal debt, denying state-created franchises, and revoking and rescinding his former social security number. Petitioner is not a 14th Amendment citizen who is subject to the exclusive legislative jurisdiction pursuant to Art. I, Sec. 8, cl. 17. Petitioner is a white male Christian with inherent and inalienable rights as defined in Art. I, Sec. 1 of the Constitution of Illinois and protected by Amendment 10. See 19 How. (60 U.S.) 393, 404-407, 410, and 411 of *Dred Scott v. Sandford* (1856); 43 Cal. 43, 46-47 of *Van Valkenburg v. Brown* (1872); 16 Wall. (83 U.S.) 36, 72-79, 82, and 83 of *Slaughter-House Cases* (1872); 111 U.S. 746 at 756-757, & 762 of *Butchers' Union Co. v. Crescent City Co.* (1883); 29 S.Ct. 14, 17 & 18 of *Twining v. New Jersey* (1908), and 56 S.Ct. 252, 258 of *Colgate v. Harvey* (1935).

If you join social security, you are waiving your inalienable white Christian rights that the Preamble people of the Constitution possess. You have destroyed your State sovereignty and given Congress exclusive power to legislate under Art. I, Sec. 8, cl. 17 rather than Art. I, Sec. 1.

Social security is valid as an excise tax on employers. It has never been adjudicated by the Supreme Court from

the standing of an employee. See *Helvering v. Davis*, 57 S.Ct. 904 at 907. It was declared unconstitutional by the 1st Circuit in *Davis v. Boston & M.R. Co.*, 89 F.2d 368; and *Davis v. Edison Electric Ill. Co. of Boston*, 89 F.2d 393. It was held constitutional in *Chas. C. Steward Mach. Co. v. Davis*, 57 S.Ct. 883, by a 5 to 4 vote. *Helvering v. Davis*, supra, then reversed the 1st Circuit on the employer part and refused to rule on the employee part for jurisdictional reasons. Please note that proceeds collected go into the Treasury of the United States like Internal Revenue collections generally, and are not earmarked in any way. *Steward Mach. Co., id.* at 885; and *Helvering, id.* at 906. Please also note that the government waived its defense under the I.R. Code and 4 justices believed that the court should have refused to give equitable relief because a cause of action in equity was neither pleaded nor proved, *id.* at 908. Social security may be accurately described as a form of social insurance. *Flemming v. Nestor*, 80 S.Ct. 1367, 1372.

Furthermore, I.R.C. Sec. 7441 states that U.S. tax court is an Article I Court. I.R.C. Sec. 7443(e) states that the term of office of any U.S. tax court judge is 15 years. Thus Judge Parker lacked authority to issue a judgment for the United States because she lacked independence as required by the Constitution. *Northern Pipeline Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 58-59. An Extraordinary Writ in the nature of ~~mandamus~~ PROHIBITION should be granted to confine Judge Parker to a lawful exercise of her prescribed jurisdiction. Petitioner has preserved the right to make a constitutional test case by refusing to pay the judgment of Judge Parker because of the principles stated in *Fahey v. Mallonee*, 332 U.S. 245, 255.

Respectfully submitted,

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APPENDIX "A1"

UNITED STATES TAX COURT
Washington, D.C. 20217

JOHN L. CHEEK	)	
	)	
Petitioner	)	
	)	
v.	)	Docket No. 7824-82
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent	)	

DECISION

Pursuant to the determination of the Court, as set forth in its T.C. Memo. 1987-84, filed February 11, 1987, it is

ORDERED and DECIDED: That there are deficiencies in petitioner's Federal income tax for the taxable years 1978 and 1979 in the amounts of $8,112.30 and $13,645, respectively. It is further

ORDERED and DECIDED: That there are additions to the tax pursuant to the provisions of section 6653(a), Internal Revenue Code of 1954, due from petitioner for the taxable years 1978 and 1979 in the amounts of $405.61 and $682, respectively. It is further

ORDERED and DECIDED: That damages are due from petitioner which are hereby awarded to the United

States in the amount of $5,000 pursuant to section 6673, Internal Revenue Code of 1954, as amended.

/s/ Edna G. Parker
Edna G. Parker
Judge

ENTERED: Feb 19 1987

APPENDIX "B1"

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

July 14, 1987

Before

Hon. RICHARD A. POSNER, Circuit Judge
Hon. DANIEL A. MANION, Circuit Judge
Hon. MICHAEL S. KANNE, Circuit Judge

JOHN L. CHEEK, Petitioner-Appellant,	)	
	)	Appeal from the
No. 87-2030 v.	)	United States
	)	Tax Court.
COMMISSIONER OF INTERNAL REVENUE, Respondent-Appellee.	)	

This matter comes before the court for its consideration upon the "WRIT OF ERROR" filed herein on July 2, 1987, by the pro se petitioner-appellant. Petitioner has not indicated that any of the issues he raises in his opinion cannot be adjudicated on appeal from the judgment he challenges. Extraordinary writs may not be used as substitutes for appeal. Accordingly,

IT IS ORDERED that the writ is DENIED.

APPENDIX "B2"

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

February 16, 1988.

Before

Hon. RICHARD A. POSNER, Circuit judge

Hon. DANIEL A. MANION, Circuit Judge

Hon. MICHAEL S. KANNE, Circuit Judge

JOHN L. CHEEK, Petitioner-Appellant,	)	
No. 87-2030 v.	)	Appeal from the United States Tax Court.
COMMISSIONER OF INTERNAL REVENUE, Respondent-Appellee.	)	

This matter comes before the court for its consideration of the following documents:

1. "MOTION TO RECONSIDER AND ISSUE NEW DETERMINATION" filed herein on July 27, 1987 by pro se appellant.

2. "NOTICE AND ADDENDUM" filed herein on December 16, 1987 by pro se appellant.

On consideration thereof,

IT IS ORDERED that the "MOTION TO RECONSIDER AND ISSUE NEW DETERMINATION" is DENIED.